

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DONALD DACE, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:07CV239 RWS
)	
JOSEPH BARTHOLOMEW, et al.,)	
)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before me on plaintiffs’ motion for reimbursement of expert costs. This case was originally set for trial on October 14, 2008. On October 1, 2008, defendant filed an “emergency” motion for leave to continue the trial date. I held a hearing on this motion and other matters on October 7, 2008. At the hearing, one of defendant’s four lawyers, Victor Pioli, stated on the record that the continuance was sought to accommodate the trial schedule of Joseph Marconi.¹ According to Pioli, Marconi is lead trial counsel for defendant. To ameliorate the prejudice of a continuance to plaintiffs, Pioli agreed (in open court and on the record) that defendant would cover plaintiffs’ costs of rescheduling the trial, including expert witness fees. **On the basis of this representation by counsel**, I

¹Defendant then requested I move the trial date again to accommodate Marconi’s vacation schedule. I declined.

granted the motion to continue the trial.

Despite counsel's representation to me, defendant has refused to pay the expert witness fees incurred by plaintiffs as a result of the continuance. Defendant argues that the amount sought by plaintiffs' expert witness is not reasonable. I disagree. The amount sought by plaintiffs is the actual amount paid to plaintiffs' expert for the cost of continuing the trial. That amount is therefore reasonable. Defendant obtained the benefit of continuing the trial date based on his attorney's representation to me that he would cover the costs of the continuance to plaintiffs. Defendant must fulfill his promise to plaintiffs and to this Court or face sanctions for his continued refusal to do so.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' motion for costs [#197] is granted, and defendant shall pay plaintiffs the amount of \$12,500.00 before the start of trial on Monday, November 10, 2008 or face sanctions from this Court.

A handwritten signature in black ink, appearing to read "Rodney W. Sippe", written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 5th day of November, 2008.